

REMARKS

1. Preliminary Remarks

a. Status of Claims

Claims 1-3, 5-11, 14-18, 23-25, and 35-38 are pending in this application. Claims 1 and 38 are amended. Applicant respectfully requests entry of the amendment and remarks made herein into the file history of this application. Upon entry of the amendments, claims 1-3, 5-11, 14-18, 23-25, and 35-38 will be under active consideration.

b. Amendment to the Claims

Claim 1 is amended to be directed in part to an actuated leg prosthesis for replacement of a leg of an above knee amputee comprising a first pivot assembly for operatively connecting said top end of said trans-tibial member to said knee member to permit relative rotation between said knee member and said trans-tibial member about a first pivot axis defined by said pivot assembly...wherein said first pivot axis is a prosthetic knee joint. Support for amended claim 1 can be found throughout the specification, for example, page 3, lines 15-17 and page 7, lines 9-23. The first pivot assembly (30) defines a first pivot axis (31) that is substantially perpendicular to the main longitudinal axis (15) extending along the length of trans-tibial member (14) in the frontal plane as shown in Figure 1. Applicant submits that the first pivot axis provides a prosthetic knee joint because this knee mechanism is at the hinge connections of the the first pivot assembly (30) comprises an axle (32) supported by two bearings (34) each mounted in a corresponding housing (36) in the flanges (24) of the knee member (12).

Claim 38 is amended to be directed to amendment the antecedent basis of the trans-tibial member of claim 1.

2. Patentability Remarks

a. 35 U.S.C. §112, Second Paragraph

On page 2 of the Office Action, the Examiner rejects claim 38 under 35 U.S.C. §112, second paragraph for allegedly being indefinite. Specifically, the Examiner asserts that the phrase “said a trans-tibial” lacks proper antecedent basis and is grammatically improper. As discussed above, amended claim 38 is now directed to the prosthesis of claim 1, wherein said trans-tibial member comprises an open channel member between said top and bottom ends thereof having spaced apart walls, said second pivot assembly being pivotally mounted to said spaced apart walls of said open chamber member. Applicant submits that the trans-tibial member is introduced in claim 1 and therefore has proper antecedent basis. In view of the foregoing amendment, Applicant respectfully submits that the rejection of claim 38 under 35 U.S.C. §112, second paragraph, has been overcome and should be withdrawn.

b. 35 U.S.C. §103(a)

On pages 3-5 of the Office Action, the Examiner rejects claims 1-3, 5-11, 14-18, 23-25, 35-38 under 35 U.S.C. §103(a) as being unpatentable over Johnson (U.S. Patent No. 6,206,932; hereafter “Johnson”). Specifically, the Examiner asserts that the embodiments of Figures 5A and 10 of Johnson is functionally capable of being used with an above-knee amputation and the Johnson mechanism with the mounting adapter (604) serves as a lower member or base for a prosthetic knee joint.

As discussed above, claim 1 has been amended in part to define the first pivot axis as a prosthetic knee joint thereby placing the mechanical knee at the hinge connections of the claimed prosthesis. As acknowledged by the Examiner, defining the first pivot axis as a prosthetic knee joint axis is patentably distinct over Johnson because there is no “reason, suggestion, or motivation for locating the ‘mechanical knee’ [of] Johnson (column 2, lines 42-44; column 4, lines 15-21) at the hinge connections 606 and/or 618.” See page 2 of the Office Action. Rather, as further acknowledged by the Examiner, the “mechanical knee” of Johnson would have been “positioned above the mounting mechanism 602 and 604 (see column 9, lines 2-4; Figure 10; column 2, lines 42-44; column 4, lines 31-33; column 3, lines 67 to column 4, line 2)” of Johnson. *Id with emphasis added.* In view of the foregoing amendment and as acknowledgment by the Examiner, Applicant respectfully submits that the claimed invention is not obvious over Johnson. Dependent claims 2, 3, 5-11, 14-18, 23-25, and 35-38 are also not obvious over Johnson as these claims draw their dependency from amended claim 1. Accordingly, Applicant respectfully submits that the rejection of claims 1-3, 5-11, 14-18, 23-25, and 35-38 under 35 U.S.C. §103(a) over Johnson has been overcome and should be withdrawn.

3. Conclusion

Applicant respectfully submits that the instant application is in good and proper order for allowance and early notification to this effect is solicited. If, in the opinion of the Examiner, a telephone conference would expedite the prosecution of the instant application, the Examiner is encouraged to call the undersigned at the numbers listed below.

Respectfully submitted,

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